REMARKS

The Examiner has rejected claims 1-20 under 35 USC § 103(a) as being unpatentable over Alivizatos (USPN 4,689,844) in view of several secondary references. Reconsideration of the rejections is respectfully requested.

To establish a prima facie case of obviousness three criteria must be met. First, there must be some suggestion or motivation to modify a cited reference or to combine more than one cited reference. MPEP 2142. Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference or references when combined must teach or suggest all the elements of applicant's claimed invention. *Id.* In meeting the foregoing criteria, it is essential that the prior art provide some motivation or suggestion to one of ordinary skill in the art to make applicant's claimed invention. *In re Vaeck*, 947 F.3d 488, 493 (Fed Cir. 1991). This teaching or suggestion to make the applicant's claimed invention must be found in the prior art, not in applicant's disclosure. Id. Considering this controlling law and the reasons set forth below, the Applicant submits that the Examiner has failed to establish a prima facie case of obviousness of claims 1-20.

The Examiner improperly relies on numerous combinations of multiple references to reject claims 1-20; however, none of the references by themselves or in combination with each other teach or suggest each and every limitation of applicant's invention.

Applicant's invention relates to an infant restraining apparatus and soil barrier which prevents the infant from rolling from side to side during diaper changing by utilizing chest/shoulder restraints while simultaneously protecting the changing surface and/or the person changing the diaper from being inadvertently soiled. In contrast, the

Alivizatos reference, which the Examiner relies on as the primary reference for rejecting claims 1-20, teaches the art of body supporting pads.

Regarding the rejection of claims 1-20, the Examiner admits the primary reference fails to disclose a rigid, foldable, impermeable insert. The Examiner also admits the primary reference fails to disclose a shoulder restraining means. The Examiner attempts to cure these deficiencies by citing Zheng (USPN 6,557,192) which relates to a sleeping bag apparatus; Firkins, Jr. (USPN 6,058,535) which relates to a universal sport seat; and Aboud et al. (USPN 6,237,945) which teaches a vehicle passenger restraint system. The Examiner uses the Zheng and Firkins, Jr. references to attempt to cure the deficiency regarding the rigid, foldable, impermeable insert. Indeed Zheng does teach a rigid, foldable, impermeable insert and Firkins does teach a plurality of inserts; however, there is no suggestion or motivation within the Zheng or Firkins, Jr. references to utilize this insert within an infant restraining apparatus used for diaper changes.

The Examiner then utilizes the Aboud reference to attempt to cure the deficiency regarding the shoulder restraining means. Indeed Aboud does teach a shoulder restraining means; however, at best, there is no suggestion or motivation within the Aboud reference to utilize Aboud's shoulder restraining means in combination with an infant restraining device. It is clear that the restraining means presented in the Aboud reference is merely a seat belt type substitute for adult use in vehicles. It is not intended for use in a baby changing apparatus. Moreover, even assuming *arguendo* that Aboud's reference was intended for use in a baby changing apparatus it would still not cure the deficiency of the Alivizatos reference because the position of the shoulder restraining

means in Aboud would not allow for an efficient means of changing a baby's diaper while securing his upper body (i.e. the device in Aboud would obstruct access to the diaper). See Applicant's figure 5 in comparison with Aboud's Figure 7. This would fly in the face of applicant's invention and would render it inoperable. Still, furthermore, the Examiner states that "it would also be obvious to one of ordinary skill in the art to modify Alivizatos by substituting the restraining means as taught by Aboud et al. for the restraining means disclosed by Alivizatos since it is a design choice to restrain the lower half or the upper half of a baby." This is simply untrue because it goes to the heart of applicant's invention. The purpose of the applicant's invention is to create a baby changing apparatus that allows changing of a diaper while securing the baby's upper body. As stated previously, Aboud would not allow for an efficient means of changing a baby's diaper while securing his upper body because of the obstructing nature of the Aboud design. Therefore the restraint system of Aboud could not possibly be used in applicant's invention and one having ordinary skill in the art could only conclude that the strategic placement of applicant's upper body restraint system, in the combination of elements as claimed, is much more than a mere design choice.

CONCLUSIONS

Applicant respectfully requests reconsideration of claims 1-20 and submits that, in view of the arguments presented herein, the Examiner's rejections of the claims under 35 U.S.C. 103 have been overcome. In view thereof, the Examiner is respectfully requested to withdraw the subject rejections and the allowance of claims 1-20 is hereby solicited.

It is believed that no additional fees are due at this time. If this is in error, the

Commissioner is hereby authorized to charge any such fee to Deposit Account No. 50-0644.

If the Examiner feels that a telephone conversation would assist in bringing this case to conclusion, he is invited to contact the undersigned telephonically.

Respectfully Submitted,

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Matthew A. Pequignot
Registration No. 43,851
Attorney for Applicant

Hall, Myers, Vande Sande, and Pequignot
10220 River Road, Ste. 200
Potomac, Maryland 20854
(301) 983-2500

I hereby certify that this paper is being facsimile transmitted to Examiner Sunil Singh at Art Unit 3673 at the U.S. Patent and Trademark Office, Fax No. (703) 872-9306 on the date shown below.

Matthew A. Pequignot, Esq.
Reg. No.: 43,851
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